

# CIT Rejects Broad Challenge to Section 232 Tariffs

On February 4, 2021, a three-judge panel at the U.S. Court of International Trade (CIT) **denied** a broad challenge by Universal Steel Products and several other importers (“plaintiffs”) to Section 232 tariffs that former President Donald Trump placed on steel imports. The plaintiffs had challenged both the report by the U.S. Department of Commerce (“Commerce”) supporting the Section 232 steel tariffs (“Steel Report”) and President Trump’s executive order, Proclamation 9705, and its subsequent modifications (collectively, “Proclamations”), claiming that they violated various Section 232 procedural requirements and the Administrative Procedure Act (APA).

In their complaint, plaintiffs alleged: (1) the Steel Report is a reviewable, final agency action, is procedurally deficient, and invalidates subsequent presidential action; (2) both the secretary of Commerce and President Trump fundamentally misinterpreted the statute by failing to base their determinations on an “impending threat”; (3) President Trump violated Section 232 by failing to set the duration of the action he chose; and (4) tariffs imposed on Canada, Mexico and EU member countries violated Section 232 timing provisions.

**The CIT rejected each of the plaintiffs’ four claims.** For the first two claims, the CIT found that Commerce and President Trump’s actions are unreviewable. The CIT rejected the plaintiffs’ claims against Commerce, finding that the Steel Report is not a reviewable “final agency action” under the APA because it was within President Trump’s discretion to accept or reject Commerce’s recommendation. According to the CIT, President Trump, instead of the agency, acted to impose the tariffs. The CIT also denied the plaintiffs’ second claim that President Trump failed to identify an “impending threat,” holding that his exercise of discretion is unreviewable.

The CIT rejected the plaintiffs’ third claim that President Trump failed to set a duration for the tariffs in violation of Section 232, finding his edict that the tariffs remain in effect as long as national security is threatened satisfied this Section 232 requirement. The CIT disagreed with the plaintiffs that Section 232 requires the president to set a “definite duration” for the measures, stating that “even if the duration may be unlimited, it is not undefined, but bounded by whether, in the president’s judgment, the threat to impair national security exists.” In response to the plaintiffs’ fourth claim, the CIT disagreed with their statutory interpretation of Section 232’s timing provision, finding that the president does not need to wait for the 180-day negotiation period to expire before taking any action under Section 232.